FIRST FOCUS
MAKING CHILDREN & FAMILIES THE PRIORITY

1110 Vermont Avenue NW, Suite 900 | Washington, DC 20005 | T: 202.657.0670 | F: 202.657.0671 | www.firstfocus.net

May 6, 2009

Miranda Lynch
Division of Policy, Children's Bureau
Administration on Children, Youth and Families
Administration for Children and Families
1250 Maryland Avenue, SW, 8th Floor
Washington, DC 20024

Dear Ms. Lynch:

The following comments are submitted by First Focus in response for request for public comment concerning requirements for transferring children from the placement and care responsibility of a state IV-E agency to a tribal IV-E agency and tribal share of IV-E administration and training expenditures published in the Federal Register on March 13, 2009 (Vol 74, No 48, Notice 4184-01) for the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services (DHHS).

We are pleased that the Fostering Connections to Success and Increasing Adoptions Act of 2008 (Public Law 110-351) will afford foster children more permanency in their lives, by enhancing states' capacity to secure safe, stable and permanent homes for all foster children, and renewing and increasing the effectiveness of the federal Adoption Incentive Program. In addition, the law provides tribes, for the first time, equal access to the federal foster care and adoption assistance programs. This provision is critical to enhancing the capacity of Indian tribes to respond to the needs of vulnerable Indian children and families.

As you know, close to 10,000 American Indian/Alaskan Native children are currently in the foster care system, often representing a disproportionate number of kids in care. In fact, the Child Welfare League of America (CWLA) reports that in some states - including Alaska and South Dakota – American Indian or Alaskan Native children represent over 45% of substantiated cases of child abuse. American Indian and Alaskan Native children in care represent our most vulnerable children. Providing tribes with equal access to SSA Title IV-E funds is essential to ensuring that tribal agencies have the capacity to provide critical supports and services to Indian children and families in need.

In preparing our comments, we have tried to better understand the complexities that abound in transferring children from the placement and care responsibility of a state IV-E agency to a tribal IV-E agency, and encourage you to consider convening an advisory group that could serve as a resource to you as you develop guidance and regulations with respect to administering the program. Such an advisory group would NOT serve in lieu of tribal consultation, but in addition to such a group. Additionally, we hope that DHHS will continue to pursue robust tribal consultation – with advance notice - in drafting and finalizing any regulations, both now and in the future. Continuing to provide such opportunities to comment on regulations as the transfer of responsibility shifts from state IV-E agencies to tribal IV-E programs will be essential to ensuring that this program is successfully and swiftly implemented and can truly benefit American Indian and Alaskan Native children in care.

Specifically, the following comments are submitted by First Focus in response to issues raised by DHHS Notice 4184-01 request for public comment:

Question One. Considering that the secretary is to apply Title IV-E to tribes in the same manner as to states except where directed by law, what, if any, provisions and clarifications related to title IV-E programs for directly-funded tribes should be in regulations?

Response. Where the terms of the statute are open for interpretation, those terms should be interpreted in a manner that would facilitate the involvement of tribes in the Title IV-E program. We believe that this is essentially what Congress intended, and in fact, the accompanying Senate Report 110-972 notes that "tribes…may provide higher quality and more culturally appropriate care for Indian children."

In addition, we urge that, unless precluded explicitly by the statute language, the statute should be interpreted in a manner that would not conflict with tribal belief systems and practices. Specifically, two examples of tribal policies that should be accommodated in implementing the statute are: customary adoptions and tribal placement preferences.

Moreover, we ask that you consider the following specific recommendations:

1. Develop guidelines for states as to what constitutes a *good faith effort* by a state to negotiate an agreement with a tribe. We also recommend that the guidelines clarify that the good faith requirement extends to not only the tribal-state agreements where the state retains primary responsibility, but also to agreements where a tribe is directly funded and is seeking to develop agreement(s) with the state to perform certain responsibilities. In addition, it is important that such guidelines be developed in consultation with tribes and states.
2. Clarify that tribes receiving funding in FY 2009-2010 are eligible for the enhanced FMAP provided for in the economic stimulus package.
3. Currently, approximately 40% of tribes receive less than $10,000 from Title IV-B, Subpart 1. This funding is inadequate and does not allow for the development, administration, data collection and reporting that are necessary components of Title IV-B, Subpart I. As such, we ask that you NOT require tribes to operate Title IV-B, Subpart 1 in order to operate Title IV-E. We believe that so long as protections are NOT minimized in any way, removing the requirement that tribes operate IV-B, Subpart I in order to administer IV-E will significantly reduce the administrative burden on tribes. If this is not possible, we would propose that at a minimum, HHS integrate the application for Title IV-B, part 1 into the proposed Title IV-E plan in a manner which would minimize the administrative burden on tribes.

Question Two. Are guidelines above and beyond those provided pursuant to the ICWA needed to execute the transfer of placement and care responsibility of a Title IV-E Indian child to a tribe operating a Title IV-E plan? If so, please provide suggestions.

Response. In general, no, with the exception of information sharing requirement detailed below in response to question three.

Question Three. What specific information pertaining to Title IV-E and Title XIX Medicaid should a state make available to a tribe that seeks to gain placement and care responsibility over an Indian child?

Response. In general, all information necessary to allow the child to have continued eligibility and for the tribal placement and care agency to provide effective case management. At a minimum, the state should provide the same information that it provides to another state to whom custody has been transferred pursuant to the Interstate Compact on the Placement of Children (ICPC).

Question Four. Should the third-party sources and in-kind limits on tribal administrative and training costs remain consistent with section 479(c)(1)(D) of the Act? Please provide a rationale for this response.

Response. We believe that the biggest barrier faced by tribes who may want to administer Title IV-E is the match requirement. In order to encourage as many tribes as possible to participate, it is important that the requirement of in-kind regulations be as broad as possible. For instance, one approach to expanding the regulations would be to permit tribes to use in-kind contributions from their own tribal programs, regardless of how funded, and not limit it to only in-kind contributions from other tribes.

For more information, please contact Shadi Houshyar, Vice President for Child Welfare Policy at First Focus at ShadiH@firstfocus.net.